

### **Remarks**

This communication is considered fully responsive to the Office Action. Claims 1-21 were examined. Claims 1-21 stand rejected. No claims are amended. No claims are canceled. No new claims have been added. Reexamination and reconsideration of the pending claims are respectfully requested.

### **Claim Rejections - 35 U.S.C. 102(e)**

The Office Action rejected claims 1-5 and 9-14 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,601,456 to Davidson, et al. ("Davidson"). Applicant respectfully traverses this rejection.

Applicant submits that Davidson is not available as prior art under Section 102(e), and in support thereof, Applicant respectfully requests reconsideration of the Amended Rule 1.131 Declaration, attached.

Although Applicant has amended the Rule 1.131 Declaration to provide additional support for prior invention, Applicant respectfully notes that a copy of the invention disclosure was recorded prior to the effective date of Davidson, and a copy was provided in Exhibit A in the Declaration. In addition, each of the inventors provided testimony of prior invention under criminal penalty.

The MPEP Section 715.07 sets forth guidelines for the Declaration. The essential thing to be shown is priority of invention and this may be done by any satisfactory evidence of the fact. Evidence in the form of exhibits may accompany the affidavit or declaration. Allegations of fact might be supported

statements by witnesses . . . and disclosure documents may be used as documentary evidence of conception.

The MPEP Section 715.07 goes on to explain that when reviewing an affidavit, the examiner must consider all of the evidence presented in its entirety, including the affidavits and all accompanying exhibits, records and "notes." **An accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself.** Ex parte Ovshinsky, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989).

For at least the foregoing reasons, Applicant believes the rejection is moot. However, Applicant makes no admissions as to the propriety of the rejection and expressly reserves the right to traverse the reference on substantive grounds if this or a similar rejection is maintained in a subsequent Office Action.

#### **Claim Rejections - 35 U.S.C. 103(a)**

The Office Action rejected claims 1, 7, 8, 12, and 15-20 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,732,591 to Miles, et al. ("Miles") in view of Davidson. Applicant respectfully traverses this rejection. The Office Action rejected claim 6 under 35 U.S.C. 103(a) as being unpatentable over Davidson in view of U.S. Patent No. 7,233,476 to Goldenberg, et al. ("Goldenberg"). The Office Action rejected claim 21 under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Davidson, still further in view of U.S. Patent No. 6,442,534 to Au, et al. ("Au").

Davidson is not available as prior art, as discussed above. Therefore, Applicant believes these rejections are moot. See MPEP 715.02(I) with regard to a combination of references. However, Applicant makes no admissions as to the propriety of the rejection and expressly reserves the right to traverse the references on substantive grounds if this or a similar rejection is maintained in a subsequent Office Action.

### **Conclusion**

The Applicant respectfully requests that a timely Notice of Allowance be issued in this matter.

Respectfully Submitted,

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